

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jason Stone, Jason for Parks  
Committee,

PROBABLE CAUSE  
ORDER

Complainant,  
vs.

Supporters of Carol Kummer for Park  
Board Committee,

Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Kathleen D. Sheehy on September 19, 2005, to consider a complaint filed by Jason Stone and Jason for Parks Committee on 15, 2005. The record was held open until noon on September 21, 2005, to allow Ms. Kummer time to review copies of emails submitted by Mr. Stone (Exhibits 1-8) and to allow both parties time to file written responses.

Jason Stone, 1708 57<sup>th</sup> Street East, Minneapolis, MN 55417, participated by telephone on his own behalf.

Robert Hentges, Attorney at Law, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402, participated on behalf of Carol Kummer and the Supporters of Carol Kummer for Park Board Committee.

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is probable cause to believe that Ms. Kummer's Committee violated Minnesota Statute § 211B.02 by using the initials "DFL" on lawn signs and campaign material.

**ORDER**

**IT IS HEREBY ORDERED:**

1. That there is probable cause to believe that the Supporters of Carol Kummer for Park Board Committee violated Minnesota Statute § 211B.02 by using the initials "DFL" on campaign literature and lawn signs.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minnesota Statute § 211B.35.

Dated: September 23, 2005

/s/ Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

## MEMORANDUM

Jason Stone and Carol Kummer are candidates in the November 8, 2005, election for the Minneapolis Parks and Recreation Board's District 5 seat. Both are first-time candidates and both are affiliated with the DFL party. Neither has the DFL party's endorsement.<sup>1</sup> Mr. Stone filed this complaint alleging that Ms. Kummer's use of the initials "DFL" on her campaign literature and lawn signs violates Minn. Stat. § 211B.02.<sup>2</sup>

Minn. Stat. § 211B.02 provides as follows:

### **211B.02 False Claim of Support.**

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

Ms. Kummer distributed approximately 3,000 campaign flyers and numerous lawn signs with the initials "DFL" by her name. At the bottom of her campaign flyer is the following language in the approximate font size:

"Labor Endorsed for Park District 5

**CAROL**

**Kummer** *DFL*<sup>3</sup>

The phrase "Labor Endorsed for Park District 5" appears to be in approximately 18-point font. The word "Kummer" is in approximately 72-point font. The initials DFL are in approximately 18-point italicized font. In between the word "Kummer" and "DFL" is a picture of an oak leaf. Ms. Kummer's lawn signs contain her name in the center of the sign with the phrase "Park District 5" in the upper right corner, and "DFL" in the upper left corner. The phrase "LABOR ENDORSED" appears underneath her name.<sup>4</sup>

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<sup>1</sup> The DFL party did not endorse any candidate for Minneapolis Park Board.

<sup>2</sup> Exhibits 1-8, which were attached to the Complaint, are hereby received into the record. Kummer had not seen them at the time of the probable cause hearing, but she made no objection to them in her written submission received the next day.

<sup>3</sup> Ex. 8.

<sup>4</sup> Ex. 9.

In *Schmitt v. McLaughlin*,<sup>5</sup> the Minnesota Supreme Court held that a candidate's use of the initials "DFL" falsely implied that the candidate had the endorsement of the DFL party in violation of Minnesota election law.<sup>6</sup> The court explained that, while candidates have a right to inform voters of their party affiliation "by the use of such words as 'member of' or 'affiliated with' in conjunction with the initials 'DFL'", the use of the initials without such modifiers falsely implies to the average voter that the candidate is endorsed or at the very least has the support of the DFL party.<sup>7</sup>

Ms. Kummer admits that she prepared and disseminated campaign literature and lawn signs in which the initials "DFL" appear in smaller print by her name. Ms. Kummer states, however, that she reviewed Minn. Stat. § 211B.02 before she prepared her campaign material and believed that by placing the DFL initials in smaller print away from the statement "labor endorsed," she would be in compliance with the statute. Ms. Kummer maintains that it was never her intention to mislead anyone, and that once she was made aware of this complaint, she purchased a stamp and stickers bearing the word "MEMBER," which she intends to attach to her literature and lawn signs underneath the initials "DFL" to bring her campaign material into compliance.

In addition to the campaign flyer and the photo of the lawn sign, Mr. Stone submitted email exchanges or "postings" from an online discussion forum commonly referred to as "Minneapolis Issues List" in which candidates, DFL party officers, and others discussed the legality of using "DFL" initials on campaign material. In one email exchange dated August 19, 2005, which preceded a large literature drop and distribution of Kummer's lawn signs, a person informed Ms. Kummer's campaign co-chair, Jim Bush, that the use of DFL initials may not be permitted and advised Mr. Bush to read *Schmitt v. McLaughlin*.<sup>8</sup>

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>9</sup> The material facts in this case are not in dispute. Ms. Kummer admits that she prepared and disseminated the campaign literature and lawn signs in which the initials DFL appear in small print by her name. Accordingly, there is probable cause to believe a violation of section 211B.02 occurred. This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges.

K.D.S.

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<sup>5</sup> 275 N.W.2d 587, 591 (Minn. 1979) (discussing Minn. Stat. § 210A.02, predecessor to Minn. Stat. § 211B.02).

<sup>6</sup> *Accord, In the Matter of the Election of Ryan*, 303 N.W.2d 462 (Minn. 1981).

<sup>7</sup> 275 N.W.2d at 591.

<sup>8</sup> Exs. 3 and 4.

<sup>9</sup> Minn. Stat. § 211B.34, subd. 2.